

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

CHAUNCEY LAURENT WALKER, #325482

Petitioner,

v.

2:05CV693

GENE M. JOHNSON, Director of the  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

\_\_\_\_\_There is pending a petition for a writ of habeas corpus submitted pursuant to 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on February 26, 2002, in the Circuit Court for the City of Alexandria, Virginia.

Petitioner has filed a "Motion for Leave of Court to Amend Parties" and a "Motion to Hold Petition in Abeyance." For the foregoing reasons, the motion to amend is GRANTED, in part, and the "Motion to Hold Petition in Abeyance" is DENIED.

The petition named S.K. Young, Warden of Wallens Ridge State Prison, as the respondent. Petitioner wishes to amend the petition by substituting Dave Robinson, who is the new warden of Wallens Ridge, as the respondent. However, the proper party respondent should be Gene M. Johnson, the Director of the Virginia Department of Corrections. Therefore, it is ORDERED that the petition shall be deemed amended to substitute as the sole respondent in this proceeding Gene M. Johnson, Director of the Virginia Department of Corrections. See Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts (foll. 28 U.S.C. § 2254).

Petitioner's "Motion to Hold Petition in Abeyance," seeks to delay action on the petition until the Supreme Court of Virginia has ruled on petitioner's motion for rehearing, which was filed October 18, 2005. Petitioner is advised that until the Supreme Court of Virginia has rendered its decision on his motion for rehearing, this Court has no jurisdiction over his petition and is not inclined to keep the file open until such time as petitioner has exhausted his state court remedies. Therefore, it is ORDERED that the petition be, and it hereby is, DISMISSED without prejudice to refile after exhaustion of state court remedies.

The petitioner may appeal from the judgment entered pursuant to this Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 123 S. Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Order to petitioner.

/s/Rebecca Beach Smith

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UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

December 9, 2005

Order recommended by:

/s/James E. Bradberry

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UNITED STATES MAGISTRATE JUDGE

December 8, 2005